

February 7, 2003

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**DANA M. SMITH**  
EXECUTIVE OFFICER

**TO:** Local Agency Formation Commission

**FROM:** Executive Officer  
Project Manager

**SUBJECT:** Consultant Contracts for Municipal Service Reviews

During the past year, staff has been working with the LAFCO Municipal Service Review Committee and a team of professional consultants to begin the design and development of a strategic approach and programmatic process for the implementation of municipal service reviews ("MSRs"). LAFCO recently "rolled out" the proposed strategic approach for the MSRs to the full Commission and the public at the January 31, 2003 Annual Strategic Planning Session. Consistent with the process outline and proposed schedule, staff is ready to launch Phase One of the MSR program with consultant support as soon as possible and is seeking authorization from the Commission to:

- Finalize a scope of work for consultant contracts for Phase One of the MSR program.
- Select consultants and execute contracts for work to be performed in Phase One as budgeted by the Commission last June for Fiscal Year 2002/03.

### Background

Phase One of the MSR program will consist of a series of interviews with public and private stakeholders in Orange County. The purpose of the interviews is to gather data and information about stakeholder views on local and regional municipal service and infrastructure issues related to future growth and development in Orange County. To encourage open and candid responses from the stakeholders, all interviews will be conducted by the consultants without LAFCO staff participation or involvement, and the identity of the interviewees will be disassociated with the interview results.

Upon completion of the interview process, the consultants will prepare and submit to LAFCO a written report of their findings, analysis, and recommendations. The consultants will orally present the report to the Commission at the April 9, 2003 regular LAFCO meeting. A draft scope of work is attached describing LAFCO's expectations, detailing the required deliverables, and setting forth timelines for work to be performed and deliverables to be completed and submitted for review.

Budget

Last June, the Commission approved and established in its annual budget a minimum baseline of \$40,000 for LAFCO's MSR program in FY 02/03. Staff is requesting that the Commission authorize the Executive Officer to execute contracts for Phase One of the MSR program within, and not to exceed, the budgeted amount. This will allow LAFCO staff and consultants to proceed with the Phase One interviews without delay.

Commission Ratification

Consistent with the Commission's adopted *Budget Policies and Procedures*, upon successful negotiation and execution of contracts for the Phase One interview process, staff will bring final contracts back to the Commission for ratification at the March 12, 2003 regular LAFCO meeting. The contracts will be substantially in the same form as past contracts LAFCO has entered into for similar professional services. A sample template is attached which lists the general terms and conditions LAFCO commonly applies to consultant contracts.

**RECOMMENDATIONS:**

Staff recommends that the Commission:

1. Authorize the Executive Officer to finalize scopes of work for Phase One of the LAFCO Municipal Service Review program for selected consultants.
2. Authorize the Executive Officer to execute contracts with selected consultants for Phase One of the LAFCO Municipal Service Review program as defined in the final scopes of work, and within the budgetary framework of LAFCO's adopted budget for Fiscal Year 2002/03.
3. Direct the Executive Officer to return to the Commission at the March 12, 2003 regular LAFCO meeting with executed consultant contracts for ratification by the Commission.

Respectfully,

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DANA M. SMITH

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KENNETH G. LEE

Attachment:

1. Draft Scope of Work
2. Contract Template

## **LAFCO Municipal Service Review Program**

### **SCOPE OF WORK**

#### ***Tier One: Phase One – Stakeholder Interviews***

#### **SCOPE OF WORK TO BE PERFORMED AND STANDARDS TO BE FOLLOWED**

Orange County LAFCO desires the consultant to perform a series of interviews with various public and private stakeholders in Orange County to gather data and information about stakeholder views on local and regional municipal service and infrastructure issues in Orange County related to current and future growth and development in the County. The findings, analysis, and conclusions drawn from the interview process will serve as the bases for recommendations on:

- ? An MSR process and procedures to be implemented in Phase Two as a Prototype MSR
- ? Selecting a regional area for conducting the Phase Two Prototype MSR
- ? Establishing regions and subregions in Orange County for the programmatic implementation of the MSR program in Phase Four

The following is a detailed summary of the scope of the Phase One Stakeholder Interviews and LAFCO's expectations, assumptions, and standards of performance for Phase One.

#### **A. Deliverables**

##### **1. Stakeholder Interviews**

The consultant shall conduct approximately [XX] individual one-on-one, in-person interviews with stakeholder persons assigned and listed in an interview roster approved by LAFCO. Interviews shall be conducted by no more than one representative from the consulting firm. LAFCO anticipates each interview to take no longer than 60 minutes to conduct and complete. The consultant shall be responsible for directly contacting the assigned stakeholders and scheduling all interviews. Wherever possible, interviews should be grouped or clustered by trip days to minimize the number of trips necessary to conduct and complete all interviews and minimize the time to complete the Phase One process within the timeline set forth below.

##### **2. Consultant Report**

Upon completion of all stakeholder interviews, the consultant shall prepare and complete a joint report, with any other consultant(s) selected to participate in the Phase One Stakeholder Interviews, on the results of the interview process. That report shall include, but is not limited to:

- a. A background discussion of the LAFCO MSR Program and the Phase One Stakeholder Interviews process
- b. A complete summary and explanation of the findings from the interviews.

- c. An analysis of the findings and conclusions drawn from the interviews relative to LAFCO's goals, guiding principles, and strategic, programmatic approach to MSRs.
- d. Recommendations, based on analysis and conclusions, on:
  - i. Process and procedures for conducting MSRs, to be implemented in Phase Two as a prototype MSR
  - ii. Selection of a region and/or subregion(s) for conducting the Phase Two Prototype MSR
  - iii. Establishing criteria for evaluating the success of the MSR process as implemented as a prototype in Phase Two
  - iv. Proposed regions and subregions for implementing the MSR program in Phase Four

Completion of the consultant report shall include any necessary revisions and changes as requested by LAFCO. The submission of a draft report to LAFCO must be early enough to incorporate changes into the final report and still meet the identified deadline.

3. Presentation of Consultant Report to the Commission

The consultant shall make a joint formal presentation of the consultant report to the Commission, with LAFCO staff and any other consultant(s) selected to participate in the Phase One Stakeholder Interviews.

B. Timeline for Work to be Performed

The consultant shall immediately begin to schedule stakeholder interviews seven (7) days following LAFCO mailing of the introductory letter to the stakeholders informing them of the interview process.

C. Timeline for Deliverables to be Completed and Submitted for Review

The consultant shall be responsible for preparing and completing all deliverables for Phase One, as described above, in a timely manner that is consistent with the below timeline.

<b>Deliverable</b>	<b>Due Date</b>
Interviews and Consultant Report	Monday, March 24, 2003
Presentation of Consultant Report	Wednesday, April 9, 2003

LONG FORM

AGREEMENT FOR SERVICES BETWEEN  
ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION  
AND  
\_\_\_\_\_

This agreement is made and entered into as of \_\_\_\_\_, 2003 by and between ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION (hereinafter referred to as "LAFCO"), organized and operating pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, et seq. and \_\_\_\_\_ (hereinafter referred to as "Consultant").

RECITALS

A. LAFCO is a public agency of the State of California and is in need of professional services for the following project: \_\_\_\_\_ (hereinafter referred to as "the Project").

B. Consultant is duly licensed and qualified by virtue of experience, training, education and expertise to provide such services.

C. The parties desire by this agreement to establish the terms for LAFCO to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide LAFCO with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, LAFCO shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant pursuant to Exhibit "A" exceed the sum of \$\_\_\_\_\_. Periodic payments shall be made within 30 days of receipt of a statement for services rendered. Payments to Consultant for work performed will be made on a monthly billing basis.

c. LAFCO shall reimburse costs advanced by CONSULTANT on LAFCO's behalf, as well as other expenses, in addition to the amount billed for fees. These currently include, but are not limited to, automobile mileage and actual expenses away from CONSULTANT'S offices on LAFCO business, extraordinary photocopy charges and any costs of producing or reproducing photographs, documents and other things necessary for the preparation or presentation of LAFCO business. All costs will be itemized on LAFCO's monthly statement. LAFCO shall not pay fees for travel to or from LAFCO's offices in the ordinary course of business or reimburse mileage to CONSULTANT.

3. Additional Work.

If changes in the work seem merited by Consultant or LAFCO, and informal consultations with the other party indicate that a change is warranted, it shall be processed by LAFCO in the following manner: a letter outlining the changes shall be forwarded to LAFCO by Consultant with a statement of estimated changes in fee or time schedule. An amendment to the agreement shall be prepared by LAFCO and executed by both parties before performance of such services or LAFCO will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by LAFCO.

5. Term and Time of Performance.

The term of this Agreement shall be for one (1) year. Consultant shall perform its services hereunder in a prompt and timely manner, in accordance with the Activity Schedule shown in Exhibit "C" and shall commence performance upon receipt of the written Notice to Proceed from LAFCO. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

Neither LAFCO nor Consultant shall be considered in default of this agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.

b. Consultant shall assist LAFCO in obtaining and maintaining all permits required of Consultant by Federal, State and local regulatory agencies.

8. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant.

Consultant shall not assign, sublet, or transfer this agreement or any rights under or interest in this agreement without the written consent of LAFCO, which may be withheld for any reason. [Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.]

10. Independent Contractor.

Consultant is retained as an independent contractor and is not an employee of LAFCO. No employee or agent of Consultant shall become an employee of LAFCO. The work to be performed shall be in accordance with the work described in Exhibit "A", subject to such directions and amendments from LAFCO as herein provided.

11. Integration.

This agreement represents the entire understanding of LAFCO and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated agreement.

12. Insurance.

a. Commercial General Liability

(1) The Consultant shall take out and maintain, during the performance of all work under this agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to LAFCO.

(2) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(a) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)

(3) Commercial General Liability Insurance must include coverage for the following:

- (a) Bodily Injury and Property Damage
- (b) Personal Injury/Advertising Injury
- (c) Premises/Operations Liability
- (d) Products/Completed Operations Liability
- (e) Aggregate Limits that Apply per Project
- (f) Explosion, Collapse and Underground (UCX) exclusion deleted
- (g) Contractual Liability with respect to this Contract
- (h) Broad Form Property Damage
- (i) Independent Consultants Coverage

(4) All such policies shall name Orange County Local Agency Formation Commission, the Commission and each member of the Commission, its officers, employees, agents and LAFCO designated volunteers as Additional Insureds under the policy.

(5) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by LAFCO.

**12. [alternative]**

***[a. Consultant shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than twice the occurrence limit.]***

b. Automobile Liability

(1) At all times during the performance of the work under this agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to LAFCO.

(2) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).

(3) The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by LAFCO.

(4) All such policies shall name LAFCO, the Commission and each member of the Commission, its officers, employees, agents and designated volunteers as Additional Insureds under the policies.

c. Workers' Compensation/Employer's Liability

(1) At all times during the performance of the work under this agreement and for 24 months following the date of Project completion and acceptance by LAFCO, the Consultant shall maintain workers' compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts indicated herein.

(2) Such insurance shall include an insurer's Waiver of Subrogation in favor of LAFCO and will be in a form and with insurance companies acceptable to LAFCO

(3) If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by LAFCO.

(4) Before beginning work, the Consultant shall furnish to LAFCO satisfactory proof that Consultant has taken out for the period covered by the work under this agreement, full compensation insurance for all persons employed directly by Consultant to carry out the work contemplated under this agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. Consultant shall require all subconsultants to obtain and maintain, for the period covered by the work under this agreement, worker's compensation of the same type and limits as specified in this Section.

d. Professional Liability (Errors and Omissions).

At all times during the performance of the work under this agreement the Consultant shall maintain professional liability insurance, in a form and with insurance companies acceptable to LAFCO and in an amount indicated herein.

e. Minimum Policy Limits Required

(1) The following insurance limits are required for the Contract:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability (errors and omissions)	\$1,000,000 per claim and aggregate

f. Evidence Required

Prior to execution of the agreement, the Consultant shall file with LAFCO evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(1) All policies shall contain a provision for 30 days advance written notice by the insurer(s) to LAFCO of any cancellation. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," will not be acceptable on certificates.

(2) All policies shall contain a provision stating that the Consultant's policies are primary insurance and that the insurance of LAFCO or any Additional Insured shall not be called upon to contribute to any loss.

h. Additional Insurance Provisions

(1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by LAFCO, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this agreement, including but not limited to, the provisions concerning indemnification.

(2) If at any time during the life of the agreement, the Consultant fails to maintain in full force any insurance required by the agreement documents LAFCO may terminate the agreement.

(3) The Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

(4) LAFCO may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(5) Neither LAFCO nor the Commission, nor any member of the Commission, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this agreement.

13. Indemnification.

Consultant agrees to protect, save, defend and hold harmless LAFCO and its Commission and each member of the Commission, officers, agents and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of or in any way connected with the negligent acts, errors or omissions or wilful misconduct by Consultant, Consultant's agents, officers, employees, subconsultants, or independent consultants hired by Consultant under this agreement. The only exception to Consultant's responsibility to protect, save, defend and hold harmless LAFCO, is due to the sole negligence, wilful misconduct or active negligence of LAFCO. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification, etc. to be provided by Consultant.

14. Laws, Venue, and Attorneys' Fees.

This agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the

event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

15. Termination or Abandonment.

a. LAFCO has the right to terminate or abandon any portion or all of the work under this agreement by giving ten (10) calendar days written notice to Consultant. In such event, LAFCO shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. LAFCO shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by LAFCO and Consultant of the portion of such task completed but not paid prior to said termination. LAFCO shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this agreement upon thirty (30) calendar days' written notice to LAFCO only in the event of substantial failure by LAFCO to perform in accordance with the terms of this agreement through no fault of Consultant.

16 Organization.

Consultant shall assign \_\_\_\_\_ as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of LAFCO.

17. Notice.

Any notice or instrument required to be given or delivered by this agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

LAFCO:  
12 Civic Center Plaza  
Room 235  
Santa Ana, CA 92701  
Attn: Executive Officer

Consultant:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and shall be effective upon receipt thereof.

18. Third Party Rights.

Nothing in this agreement shall be construed to give any rights or benefits to anyone other than LAFCO and the Consultant.

19. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this agreement shall not render the other provisions unenforceable, invalid or illegal.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

Local Agency Formation Commission

\_\_\_\_\_  
Consultant

By: \_\_\_\_\_  
Dana Smith, Executive Officer

By: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
General Counsel  
Orange County Local Agency  
Formation Commission

## EXHIBIT A

### Scope of Services

**EXHIBIT B**

**Schedule of Charges/Payments**

## EXHIBIT C

### Activity Schedule